

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SCOTT DOLEMBA,)	
on behalf of plaintiff and a class,)	
)	
Plaintiff,)	
)	
vs.)	
)	
DOUBLE DIGIT COVERS, INC.,)	
)	
Defendant.)	

COMPLAINT – CLASS ACTION

INTRODUCTION

1. Plaintiff Scott Dolemba brings this action to secure redress for the placement of illegal telemarketing calls to his phone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. §227 (“TCPA”) and the Illinois Consumer Fraud Act, 815 ILCS 505/1 et seq. (“ICFA”).

JURISDICTION AND VENUE

2. This Court has jurisdiction under 28 U.S.C. §1331, *Mims v. Arrow Financial Services, LLC*, 132 S. Ct. 740, 751-53 (2012); *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446 (7th Cir. 2005), and 28 U.S.C. §1367.

3. Personal jurisdiction exists under 735 ILCS 5/2-209, in that defendant:
- a. Have committed tortious acts in Illinois by causing the transmission of unlawful communications into the state.
 - b. Have transacted or done business in Illinois.
4. Venue in this District is proper for the same reason.

PARTIES

5. Plaintiff Scott Dolemba is a resident of the Northern District of Illinois.
6. Defendant Double Digit Covers, Inc., is a Nevada corporation. Its registered agent and office is Incorp Services, Inc., 2360 Corporate Circle, Suite 400, Henderson, Nevada

89074.

FACTS

7. On November 12, 2015, plaintiff received an automated telephone call on his cell phone from 855-489-2700.

8. The number 855-489-2700 is used by Double Digit Covers, Inc. (Exhibit A)

9. On November 16, 2015, plaintiff received a second automated telephone call on his cell phone from 855-489-2700.

10. On November 22, 2015, plaintiff received a third automated call on his cell phone. After a distinct pause, characteristic of predictive dialing equipment, a live person came on the line and identified himself as Frankie from Double Digit.

11. On November 30, 2015, plaintiff received a fourth automated call on his cell phone from Double Digit.

12. On December 7, 2015, plaintiff received a fifth automated call on his cell phone from Double Digit. After seconds of dead air, plaintiff disconnected the call.

13. On January 4, 2016, plaintiff received a sixth automated call on his cell phone from Double Digit. After a 10 second pause, a live person came on the line, identified himself from Double Digit Covers and asked plaintiff if he was going to watch the game.

14. In each case, there was a distinct pause after plaintiff answered. This is characteristic of a predictive dialer, which places calls by computer and attempts to “predict” when a representative will be available to handle the call if someone answers.

15. The services offered were those of Double Digit Covers.

16. Defendant either negligently or wilfully violated the rights of plaintiff and other recipients in placing the calls.

17. Plaintiff suffered damages as a result of receipt of the call. Furthermore, plaintiff’s statutory right of privacy was invaded.

18. Plaintiff is entitled to statutory damages.

19. Defendant violated the TCPA even if its actions were only negligent.
20. Defendant should be enjoined from committing similar violations in the future.

COUNT I – TCPA

21. Plaintiff incorporates paragraphs 1-20.
22. The TCPA provides, at 47 U.S.C. §227(b):

Restrictions on use of automated telephone equipment

(1) Prohibitions

It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States--

**(B) to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by rule or order by the Commission under paragraph (2)(B);directs the Federal Communications Commission, 47 U.S.C. §227(c), .
..**

23. Plaintiff had not consented to defendant's communications.
24. The TCPA provides, 47 U.S.C. §227(b)(3) provides:

Private right of action.

A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State-

(A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to receive \$ 500 in damages for each such violation, whichever is greater, or

(C) both such actions.

If the Court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under the subparagraph (B) of this paragraph.

CLASS ALLEGATIONS

25. Pursuant to Fed.R.Civ.P. 23(a) and (b)(3), plaintiff brings this claim on behalf of a class, consisting of (a) all persons (b) who, on or after a date four years prior to the filing of

this action (28 U.S.C. §1658), (c) received calls placed using an automated dialer or using an artificial or recorded voice (d) by or on behalf of Double Digit Covers, Inc., (e) with respect to whom defendant cannot provide evidence of express consent prior to the call.

26. The class is so numerous that joinder of all members is impractical. Plaintiff alleges on information and belief, based on the cost of predictive dialing equipment and the fact that it makes no sense to use it for isolated calls, that there are more than 40 members of the class.

27. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. The predominant common questions include:

- a. Whether defendant engaged in a pattern of making or causing to be made telemarketing calls using an automated dialer or a recorded or artificial voice;
- b. The manner in which defendant compiled or obtained the list of telephone numbers;
- c. Whether defendant obtained the consent of the called parties;
- d. Whether defendant thereby violated the TCPA.

28. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has retained counsel experienced in handling class actions and claims involving unlawful business practices. Neither plaintiff nor plaintiff's counsel has any interests which might cause them not to vigorously pursue this action.

29. Plaintiff's claims are typical of the claims of the class members. All are based on the same factual and legal theories.

30. A class action is the superior method for the fair and efficient adjudication of this controversy. The interest of class members in individually controlling the prosecution of separate claims against defendant is small because it is not economically feasible to bring

individual actions.

31. Several courts have certified class actions under the TCPA: *Meyer v. Portfolio Recovery Associates, LLC*, 707 F.3d 1036 (9th Cir. 2012); *Manno v. Healthcare Revenue Recovery Group, LLC*, 289 F.R.D. 674 (S.D.Fla. 2013); *Mitchem v Illinois Collection Serv.*, 271 F.R.D. 617 (N.D.Ill. 2011); *Balbarin v. North Star Capital Acquisition, LLC*, 10 C 1846, 2011 U.S. Dist. LEXIS 686 (N.D. Ill., Jan. 5, 2011), later opinion, 2011 U.S. Dist. LEXIS 5763 (N.D.Ill., Jan. 21, 2011), later opinion, 2011 U.S. Dist. LEXIS 58761 (N.D. Ill., June 1, 2011); *Lo v. Oxnard European Motors, LLC*, 11CV1009 JLS (MDD), 2012 U.S. Dist. LEXIS 73983 (S.D.Cal., May 29, 2012); *Sadowski v. Med1 Online, LLC*, 07 C 2973, 2008 U.S. Dist. LEXIS 41766 (N.D.Ill., May 27, 2008); *CE Design Ltd. v Cy's Crabhouse North, Inc.*, 259 F.R.D. 135 (N.D.Ill. 2009); *Targin Sign Sys. v Preferred Chiropractic Ctr., Ltd.*, 679 F. Supp. 2d 894 (N.D.Ill. 2010); *Garrett v. Ragle Dental Lab, Inc.*, 10 C 1315, 2010 U.S. Dist. LEXIS 108339, 2010 WL 4074379 (N.D.Ill., Oct. 12, 2010); *Hinman v. M & M Rental Ctr.*, 545 F.Supp. 2d 802 (N.D.Ill. 2008); *Clearbrook v. Rooflifters, LLC*, 08 C 3276, 2010 U.S. Dist. LEXIS 72902 (N.D. Ill. July 20, 2010) (Cox, M.J.); *G.M. Sign, Inc. v. Group C Communs., Inc.*, 08 C 4521, 2010 U.S. Dist. LEXIS 17843 (N.D. Ill. Feb. 25, 2010); *Holtzman v. Turza*, 08 C 2014, 2009 U.S. Dist. LEXIS 95620 (N.D.Ill., Oct. 14, 2009); *Kavu, Inc. v. Omnipak Corp.*, 246 F.R.D. 642 (W.D.Wash. 2007); *Display South, Inc. v. Express Computer Supply, Inc.*, 961 So.2d 451, 455 (La. App. 1st Cir. 2007); *Display South, Inc. v. Graphics House Sports Promotions, Inc.*, 992 So. 2d 510 (La. App. 1st Cir. 2008); *Lampkin v. GGH, Inc.*, 146 P.3d 847 (Ok. App. 2006); *ESI Ergonomic Solutions, LLC v. United Artists Theatre Circuit, Inc.*, 203 Ariz. (App.) 94, 50 P.3d 844 (2002); *Core Funding Group, LLC v. Young*, 792 N.E.2d 547 (Ind.App. 2003); *Critchfield Physical Therapy v. Taranto Group, Inc.*, 293 Kan. 285; 263 P.3d 767 (2011); *Karen S. Little, L.L.C. v. Drury Inns, Inc.*, 306 S.W.3d 577 (Mo. App. 2010); *Travel 100 Group, Inc. v. Empire Cooler Service, Inc.*, 03 CH 14510 (Cook Co. Cir. Ct., Oct. 19, 2004); *Rawson v. C.P. Partners LLC*, 03 CH 14510 (Cook Co. Cir. Ct., Sept. 30, 2005); *Nicholson v. Hooters of Augusta, Inc.*,

245 Ga.App. 363, 537 S.E.2d 468 (2000).

32. Management of this class action is likely to present significantly fewer difficulties that those presented in many class actions, e.g. for securities fraud.

WHEREFORE, plaintiff requests that the Court enter judgment in favor of plaintiff and the class and against defendant for:

- a. Statutory damages;
- b. An injunction against the further violations;
- c. Costs of suit;
- d. Such other or further relief as the Court deems just and proper.

COUNT II – ILLINOIS CONSUMER FRAUD ACT

33. Plaintiff incorporates paragraphs 1-20.

34. Defendant engaged in unfair acts and practices, in violation of ICFA § 2, 815 ILCS 505/2, by making unauthorized robocall to plaintiff's cell phone.

35. Defendant's conduct is contrary to public policy, as set forth in the TCPA.

36. Plaintiff suffered damages as a result of receipt of the call.

37. Defendant engaged in such conduct in the course of trade and commerce.

38. Defendant should be enjoined from committing similar violations in the future.

CLASS ALLEGATIONS

39. Pursuant to Fed.R.Civ.P. 23(a) and (b)(3), plaintiff brings this claim on behalf of a class, consisting of (a) all persons (b) who, on or after a date three years prior to the filing of this action (815 ILCS 505/10a), (c) received calls using an automated dialer or artificial or recorded voice (d) by or on behalf of Double Digit Covers, Inc., (e) with respect to whom defendant cannot provide evidence of express consent prior to the call.

40. The class is so numerous that joinder of all members is impractical. Plaintiff alleges on information and belief, based on the cost of predictive dialing equipment and the fact that it makes no sense to use it for isolated calls, that there are more than 40 members of the

class.

41. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. The predominant common questions include:

- a. Whether defendant engaged in a pattern of making or causing to be made telemarketing calls using an automated dialer or a recorded or artificial voice;
- b. The manner in which defendant compiled or obtained the list of telephone numbers;
- c. Whether defendant obtained the consent of the called parties;
- d. Whether defendant thereby violated the ICFA.

42. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has retained counsel experienced in handling class actions and claims involving unlawful business practices. Neither plaintiff nor plaintiff's counsel has any interests which might cause them not to vigorously pursue this action.

43. Plaintiff's claims are typical of the claims of the class members. All are based on the same factual and legal theories.

44. A class action is the superior method for the fair and efficient adjudication of this controversy. The interest of class members in individually controlling the prosecution of separate claims against defendant is small because it is not economically feasible to bring individual actions.

45. Management of this class action is likely to present significantly fewer difficulties than those presented in many class actions, e.g. for securities fraud.

WHEREFORE, plaintiff requests that the Court enter judgment in favor of plaintiff against defendant for:

- a. Compensatory and punitive damages;

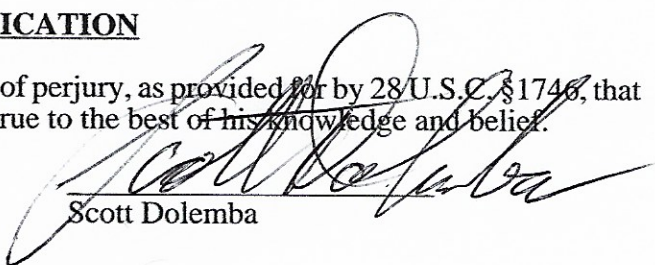
- b. An injunction against further violations;
- c. Attorney's fee, litigation expenses and costs of suit;
- d. Such other or further relief as the Court deems just and proper.

s/ Daniel A. Edelman
Daniel A. Edelman

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VERIFICATION

The undersigned declares under penalty of perjury, as provided for by 28 U.S.C. § 1746, that the facts stated in the foregoing complaint are true to the best of his knowledge and belief.



Scott Dolemba

NOTICE OF LIEN AND ASSIGNMENT

Please be advised that we claim a lien upon any recovery herein for 1/3 or such amount as a court awards. All rights relating to attorney's fees have been assigned to counsel.

s/ Daniel A. Edelman
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DOCUMENT PRESERVATION DEMAND

Plaintiff hereby demands that defendant take affirmative steps to preserve all recordings, data, documents, and all other tangible things that relate to plaintiff, the events described herein, any third party associated with any telephone call, campaign, account, sale or file associated with plaintiff, and any account or number or symbol relating to them. These materials are likely very relevant to the litigation of this claim. If defendant is aware of any third party that has possession, custody, or control of any such materials, plaintiff demands that defendant request that such third party also take steps to preserve the materials. This demand shall not narrow the scope of any independent document preservation duties of the defendant.

s/ Daniel A. Edelman
Daniel A. Edelman